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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

STEPHEN JONES,

Defendant and Appellant.

B210237

(Los Angeles County
Super. Ct. No. YA071134)

APPEAL from a judgment of the Superior Court of Los Angeles County, James R. Dabney, Mark S. Arnold and James R. Brandlin, Judges. Affirmed.

Tracy A. Rogers, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Stephen Jones appeals from the judgment entered following his plea of no contest to possession of methylenedioxymethamphetamine (M.D.M.A.) and methamphetamine (Health & Saf. Code, § 11377, subd. (a)). Imposition of sentence was suspended and Jones was granted three years formal probation. We affirm.

1. *Facts.*¹

At approximately 9:00 p.m. on January 27, 2008, Los Angeles County Deputy Sheriff Gonzalo Galvez and his partner, Michael Carpenter, were on patrol in a marked car driving south on Budlong near 106th Street. The deputy saw a GMC truck turn onto Budlong, approximately 30 feet in front of the patrol car. Galvez noted that all the windows, with the exception of the windshield, were tinted. As it is a violation of Vehicle Code section 26708 to drive a vehicle with windows tinted to such a degree that the tinting obstructs “light transmittance of 88 percent” or more,² the deputies initiated a traffic stop to warn or cite the driver.

The deputies got out of their patrol car and cautiously approached the truck. As Galvez approached the driver’s side and Carpenter approached the passenger’s side, Galvez could see that both the driver’s side and the passenger’s side windows were being rolled down. As Galvez got closer to the truck, he could see the driver, Latricia Newell,

¹ The facts have been taken from the transcripts of the preliminary hearing and the motion to suppress evidence.

² Vehicle Code section 26708, subdivision (d) provides: “Notwithstanding subdivision (a), clear, colorless, and transparent material may be installed, affixed, or applied to the front side windows, located to the immediate left and right of the front seat if the following conditions are met: [¶] (1) The material has a minimum visible light transmittance of 88 percent. [¶] (2) The window glazing with the material applied meets all requirements of Federal Motor Vehicle Safety Standard No. 205 (49 C.F.R. 571.205), including the specified minimum light transmittance of 70 percent and the abrasion resistance of AS-14 glazing, as specified in that federal standard. [¶] (3) The material is designed and manufactured to enhance the ability of the existing window glass to block the sun’s harmful ultraviolet A rays. [¶] (4) The driver has in his or her possession, or within the vehicle, a certificate signed by the installing company certifying that the windows with the material installed meet the requirements of this subdivision”

and could smell a strong odor of marijuana. Galvez and Carpenter ordered Newell and Jones, who was sitting on the passenger side of the truck, to get out of the vehicle and stand at the back of the patrol car.

While Carpenter stood with Jones and Newell, Galvez searched the interior of the truck. Although he found no marijuana, he discovered approximately five pills resembling ecstasy, or M.D.M.A., in a small baggie on the front passenger's side floorboard.

Galvez arrested Jones for possession of M.D.M.A. and placed him in the patrol car. The deputies found that Newell was not involved in the possession of the M.D.M.A. and released her. The deputies decided not to cite Newell for the Vehicle Code violation because she was "very cooperative" and appeared to understand that she needed to have the windows fixed. Under the circumstances, Galvez believed an oral warning was sufficient. The entire encounter between the deputies and the truck's occupants lasted approximately 30 minutes.

The deputies transported Jones to the station. After Carpenter advised Jones of his rights under *Miranda*,³ Jones indicated he was willing to talk to the deputy. During their conversation, Jones admitted that the ecstasy in the car belonged to him.

Galvez booked the five pills into evidence and they were taken to a lab for analysis. Edmund Ting, a senior criminalist with the Los Angeles County Scientific Services Bureau, tested one of the five pills and determined that it contained M.D.M.A. and methamphetamine.

2. Procedural history.

Following a preliminary hearing, on April 25, 2008 Jones was charged by information with possession of M.D.M.A and methamphetamine (Health & Saf. Code, § 11377, subd. (a)).

³ *Miranda v. Arizona* (1966) 384 U.S. 436.

At proceedings held on June 26, 2008, Jones made a motion to suppress the M.D.M.A and methamphetamine found in the truck. He argued that, under the facts presented, the deputies could not have reasonably suspected that any criminal conduct was taking place.

After Deputy Galvez testified that he and his partner, Deputy Carpenter, decided to stop the GMC Suburban for violation of the statute prohibiting heavily tinted windows, Latricia Newell testified. She stated that at approximately 9:00 p.m. on January 27, 2008, she was driving a burgundy 1996 GMC Suburban on Budlong between 109th and 110th Streets. In the car with Newell that evening were Jones and her 13-year-old son, D.N., was in the area to pick up her brother and had driven around the block looking for him. When Newell saw a patrol car drive up behind her and put on its lights, she pulled the Suburban to the side of the road and stopped. A deputy approached Newell, asked her where she was going, then asked her and the passengers to get out of the car. After patting down Newell, Jones and Newell's son, the officers had Newell and Jones sit inside the patrol car and Newell's son stand behind it. While Deputy Carpenter stood with the occupants of the Suburban, Deputy Galvez searched the vehicle. Neither deputy ever told Newell why she had been stopped.

Newell had purchased the Suburban from a dealership in July of 2007. She had never before been cited for driving with illegally tinted windows. Newell, who was 29 at the time of the hearing, had suffered no felony convictions as an adult. She had been found to have committed a felony when she was a 16-year-old juvenile.

Marc Firestone is a forensic engineer. He has a doctorate degree in Physics from the University of Michigan and has authored numerous publications. After 20 years of working as a research scientist, he moved into the field of forensic science and engineering. Most of his cases involve "vehicles; people who fall, trip [or] slip; product defects; fires [and] shooting[s]." The bulk of his work involves accident reconstruction.

Firestone examined the windows on Newell's 1996 Suburban. He determined the front window had a 77 percent transmission of light. The driver's side window had 58 percent light transmission and the passenger's side window had a 64 percent

transmission. For windows to be legally tinted, they must still transmit 35 percent or more of the incident light. Although the Suburban's side and back windows were not all identical, they were similarly tinted. Firestone was unaware of any device that could be used by law enforcement officers in the field to test the light transmission of a particular piece of glass or window.

The prosecutor argued that the deputies reasonably suspected that the windows on the truck were unlawfully tinted. Although it was before Newell owned the car, it previously had been stopped and the driver cited for that offense. Once the deputies approached the car, they smelled the strong odor of marijuana. It was, accordingly, reasonable for them to suspect that the occupants of the SUV had in their possession drugs or drug paraphernalia. Under these circumstances, the search of the car and its occupants was lawful.

The trial court, after listening to the testimony and viewing a photograph of the Suburban, determined that the deputies acted reasonably when they stopped the car. The court stated: "It's obvious from this photograph that the windows are tinted. The front windows, front passenger and driver's window, are not as tinted as the other windows. [¶] The only issue I see in this motion to suppress is whether there was a violation of the Vehicle Code section 26708. It doesn't matter whether the officers could or could not smell marijuana. [¶] If a lawful traffic stop is made, all of the occupants of the vehicle can be ordered outside, irrespective of probable cause or not. They could do it for officer safety purposes." The court continued, "I think that the People have demonstrated that the officer reasonably suspected that such a violation [of the Vehicle Code] occurred, and they demonstrated that by a preponderance [of the evidence], which is all that's required for a motion to suppress evidence." Although the trial court indicated it believed the defense's case was "well done," it nevertheless denied Jones's motion to suppress evidence.

At proceedings held on July 28, 2008, Jones indicated that he intended to plead no contest to the alleged charge. In exchange for his plea, any sentence imposed would run concurrently to that of two other cases which Jones had pending. After waiving his right

to a jury or court trial, his right to confront and cross-examine the witnesses against him, the right to put on an affirmative defense and his privilege against self-incrimination, Jones pled no contest to possession of methamphetamine in violation of Health and Safety Code section 11377, subdivision (a).

On August 13, 2008, Jones was sentenced on three matters: a probation violation and two open cases, one of which was his conviction for possession of methamphetamine. The trial court suspended imposition of sentence and granted Jones three years probation. Jones was ordered to serve one day in county jail, then given credit for one day in jail. He was directed to pay a \$200 restitution fine (Pen. Code, § 1202.4, subd. (b)), a \$20 court security fee (Pen. Code, § 1465.8, subd. (a)(1)), and a suspended \$200 parole revocation restitution fine (Pen. Code, § 1202.45) and to enroll in the Probation Alternative Work Service, or P.A.W.S., program.

CONTENTIONS

After examination of the record, counsel filed an opening brief which raised no issues and requested this court to conduct an independent review of the record. By notice filed November 6, 2008, the clerk of this court advised Jones to submit within 30 days any contention, ground of appeal or argument he wished this court to consider. No response has been received to date.

REVIEW ON APPEAL

We have examined the entire record and are satisfied Jones's counsel has complied fully with counsel's responsibilities. (*Smith v. Robbins* (2000) 528 U.S. 259, 278-284; *People v. Wende* (1979) 25 Cal.3d 436, 443.)

DISPOSITION

The judgment is affirmed.

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KLEIN, P. J.

We concur:

CROSKEY, J.

KITCHING, J.